IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

OP.No. 35162 of 2002(J)

PETITIONER:

SUMY GEORGE, H.S.A. MATHEMATICS,
M.A. HIGH SCHOOL, KAKKANAD,
ERNAKULAM DISTRICT.

BY ADV. SRI.KRB.KAIMAL
SRI.V.D.SUDHEER

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT. OF KERALA, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE JOINT DIRECTOR, OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS, TRIVANDRUM.

3. THE DISTRICT EDUCATIONAL OFFICER, ALUVA.

4. MANAGER, M.A. HIGH SCHOOL, KAKKANAD, ERNAKULAM.

5. SMT. SHINY VARGHESE, H.S.A. (SOCIAL SCIENCES), M.A. HIGH SCHOOL, KAKKANAD, ERNAKULAM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
SRI.A.T.ANILKUMAR FOR R5
GOVERNMENT PLEADER SHRI.SANDESH RAJA FOR R1 TO R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 59462/02 IN OP 35162/02

DISMISSED.

SD/- ANTONY DOMINIC, JUDGE.

20/2/2007

APPENDIX

PETITIONER'S EXTS:

Ext.P1 true copy of the staff fixation order No.D.Dis.6369/2000/B3 dt.31.7.2000 issued by the 3rd respondent.

Ext.P2 true copy of the order No.K.Dis.B3-27481/2000 dt. 28.12.2000 issued by the Dy. Director of Education, Ernakulam.

Ext.P3 true copy of the order no.D.Dis-8557/2001/RA(2)/DPI dt. 16.4.2001 issued by the 2nd respondent.

Ext.P4 true copy of the Circular No.H2/54419/94 dated 10.2.1995 issued by the Director of Public Instructions, Trivandrum.

Ext.P5 true copy of the Govt. order G.O.(MS)No.37/94/G.Edn. dt.16.3.1994.

Ext.P6 true copy of the order No.B.3/6187/2000/K.Dis. dt.28.4.2001 issued by the 3rd respondent.

Ext.P7 true copy of the order No.G.O.(Rt)No.4177/2001/Gl.Edn. dt.8.11.2001 issued by the 1st respondent.

Ext.P8 true copy of the judgment of this Hon'ble Court in OP No.35235/2001-T dated 13.9.2002.

Ext.P9 true copy of the hearing note submitted by the petitioner to the 1st respondent dt. 31.10.2002.

Ext.P10 true copy of the order No.G.O.(Rt)3900/02/Gl.Edn.dt. 6.11.02 issued by the 1st respondent.

5TH RESPONDENT'S EXTS:

Ext.R5(a) true copy of G.O.M.S.No.240/2000 G.Edn. Dated 24/7/2000.

Antony Dominic, J.
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O.P.No.35162 of 2002
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Dated this the 20th day of February, 2007.

JUDGMENT

The main prayer in this Writ Petition is to quash Ext.P3, P6 and P10. The petitioner is also seeking a direction to the third respondent to approve the appointment of the petitioner as H.S.A. (Maths) from 5.6.2000 onwards or at any rate at least for the period from 5.6.2000 to 4.10.2000 and from 1.1.2001 to 4.6.2001 and to grant all consequential benefits. The issue relates to the retrenchment of the petitioner, an H.S.A.(Maths), to accommodate the fifth respondent, an H.S.A.(S.S.), who according to the fifth respondent, was having approved service and was senior to the petitioner. During the course of hearing, it is pointed out that the revision petition filed by the petitioner before the Government was initially rejected by Ext.P7. This was challenged before this Court in O.P.No.35235 of 2001. By judgment dated 13.9.2002, Ext.P7 order was quashed for violation of the principles of natural justice. The matter being remanded back to the Government, the petitioner submitted Ext.P9 hearing note before the impugned order was issued. In Ext.P9, the petitioner has specifically contended as follows:

> "..... Assuming without admitting that the claim of Smt. Shiny Varghese is rightly upheld, even then she joined duty after reopening, only on 4.10.2000. Therefore, there was a vacancy to accommodate me from 5.6.2000 to 3.10.2000. Further, there arose a vacancy of H.S.A. (Maths) with effect from 1.1.01 as a result of the resignation of Smt. Princy....."

It is thereafter that the Government passed Ext.P10 impugned in this proceeding. A perusal of Ext.P10 would show that the Government has not dealt with this contention of the petitioner and therefore the matter requires reconsideration. Accordingly, Ext.P10 is quashed and the first respondent is directed to reconsider the matter taking into account the all contentions urged by the petitioner in Ext.P9 and pass fresh orders within three months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of as above.

Antony Dominic
Judge.

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